**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

TROY A. SMOCKS, Register No. 110888,   )
)
                    Plaintiff,   )
)
            v.   )   No. 09-4157-CV-C-NKL
)
ANDREW WILLIAM HASSELL,   )
)
                    Defendant.   )

ORDER

On November 2, 2009, United States Magistrate Judge William A. Knox recommended dismissing plaintiff's claims, without prejudice, for failure to state a claim on which relief may be granted under 42 U.S.C. § 1983. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions and second amended complaint filed by plaintiff on November 9, 2009. The issues raised in plaintiff's exceptions and second amended complaint were adequately addressed in the report and recommendation. The label a prisoner gives his suit is not controlling. Preiser v. Rodriguez, 411 U.S. 475, 489-90 (1973). Plaintiff's claims clearly relate to his habeas corpus proceedings. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full $455.00 appellate filing fee, regardless of the outcome of the appeal. Henderson v. Norris, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that the Report and Recommendation of November 2, 2009, is adopted. [15] It is further

ORDERED that plaintiff's claims are dismissed, without prejudice, pursuant to the provisions of 28 U.S.C. § 1915A, for failure to state a claim for which relief can be granted. It is further

ORDERED that plaintiff's motion to disqualify Judge Knox is moot. [16]

/s/ _____

NANETTE K. LAUGHREY
United States District Judge

Dated: January 4, 2010
Jefferson City, Missouri